88-1015

Supreme Court, U.S.
FILED
DEC 16 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

MARIE CULLY,

PETITIONER,

v.

GRACE HOSPITAL,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Marie E. Cully
1384 West 83rd Street #7
Cleveland, Ohio 44102
(216) 651-8637

Petitioner and Attorney Pro Se

QUESTIONS PRESENTED

1. In a Title VII case, may summary judgment be granted without any indication of the reasons for the court's decision?

2. In a Title VII case, is summary judgment proper when the record discloses conflicting evidence relevant to plaintiff's job performance?

3. Is summary judgment properly granted in a Title VII case when plaintiff's motion to compel discovery of similarly situated employees' records and of employer's criteria for task performance is denied?

4. Was summary judgment in this case contrary to plaintiff's right to due process of law?

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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

MARIE CULLY,

PETITIONER,

v.

GRACE HOSPITAL,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioner, Marie Cully, respectfully prays that a writ of certiorari issue to review the order

entered June 20, 1988 in the Sixth Circuit Court of Appeal of the United States, affirming the summary judgment of the district court.

OPINIONS BELOW

The order of the district court granting summary judgment to defendant is unreported and is reproduced in the Appendix at App. 1-2. The order of the district court denying Plaintiff's Motion for Reconsideration is unreported and is reproduced in the Appendix at App. 3-4. The order of the Court of Appeals affirming district court is unreported and is reproduced in the Appendix at App. 5-6. The order of the Court of Appeals denying plaintiff's petition for rehearing is to the best of petitioner's Knowledge unreported and is reproduced in

the Appendix at App. 7-8.

JURISDICTIONAL STATEMENT

On June 20, 1988 a panel of the United States Court of Appeals for the Sixth Circuit dated and entered an order affirming the summary judgment of the district court. On September 23, 1988, the same panel, noting that a majority of the Sixth Circuit judges had not voted to grant plaintiff's petition for rehearing en banc, denied plaintiff's petition for rehearing. The jurisdiction of this Court is sought under Title 28, USC §1254 (1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendent V:

> Nor shall any person...be deprived of life, liberty, or property, without due process of law.....

STATEMENT OF THE CASE

This is a Title VII case of retaliatory discharge. Jurisdiction of the United States district court was invoked pursuant to 28 USC § 1343 (4), 42 USC § 2000e-5(f) (1) and (3), and 28 USC §2201 and § 2202. Plaintiff has appeared from the inception of this case as a pro se layperson at law, and has paid all applicable fees.

Upon the filing of the complaint, an initial order of the district court was entered directing that any motion for an extension of time to file an answer must be made within 20 days of service. Defendant was served as allowed by state law by certified mail and plaintiff perfected service by presenting the certified mail return receipt bearing defendant's Controller's signature to district court.

Defendant did not file a timely answer, and plaintiff filed a written request to enter the default and followed with a motion for default judgment. At that point, district court set the case for a default hearing and sent notice of the hearing to defendant, which then moved to file a late answer, citing the "excusable neglect" of defendant's controller in not forwarding the complaint to defendant's attorney. Defendant's motion to file a late answer was granted ex parte. Plaintiff moved for reconsideration which was denied.

Defendnat-employer moved for summary judgment, attaching plaintiff's supervisor's affidavit which stated that plaintiff failed to sucessfully draw arterial blood and refused training during her employment as a respiratory therapist.

Plaintiff countered with her affidavit stating that she did sucessfully draw arterial blood at least four times, and attached a record showing that fact made by the same supervisor during her employment; and plaintiff affirmed that she did not refuse training, but was in fact denied training that had been promised to her.

Defendant then filed another affidavit of plaintiff's supervisor which stated that the four sucessful attempts at drawing arterial blood listed on the employer's business record were not actually sucessful because plaintiff required instruction. Plaintiff attempted to file another affidavit stating that she was never told that requesting or accepting instruction would disqualify her sucessful attempts to draw arterial blood. District court did

not allow that affidavit of plaintiff to be filed, but granted summary judgment to defendant.

District court provided no reason for its summary judgment beyond the finding of no genuine issue of material fact. Plaintiff moved for reconsideration, which was denied, finding only that summary judgment was "properly granted in the first instance." Plaintiff filed a timely appeal and a formal appellate brief, making a request for oral argument. Defendant filed their appelle's brief, and plaintiff filed a formal reply brief and an appendix.

The Sixth Circuit did not allow argument or make any findings except, "Upon review, we conclude that the district court's judgement was correct." Plaintiff then filed a timely petition for rehearing en banc, which was denied, again without further findings.

REASONS FOR GRANTING THE WRIT

1. In a Title VII case, summary judgment is improper without some indication of the reasons for the court's decison. While this Court has held in Anderson v. Liberty Lobby that "there is no requirement that the trial court make findings of fact," (Anderson v. Liberty lobby, 477 US 242 at 250) that should not be taken as authorization for the result in this case: decisions of the district court and court of appeals that do not "...state the reasons for the determination and indicate the evidence relied on." (Goldberg v. Kelley, 397 US 254 at 271). Even advocates of increased use of summary judgments have proposed revising Rule 56 to state: "The court shall set forth its reasons in a written order or orally on the record." (Schwarzer, Summary Judgment; A Proposed

Revision of Rule 56, 110 FRD 213 at 215. Such approaches not only simplify review and satisfy litigants, they enhance the authority of federal common law by thier "decent respect for the opinions" of persons.

2. Summary judgment is improper in a Title VII case where the record contains conflicting evidence of employee's performance. Defendant in this case affirmed that plaintiff did not sucessfully draw any arterial blood samples. Plaintiff affirmed that she did. Defendant did not submit any performance evaluations which were signed by plaintiff or further materials to support its allegations. Granting summary judgment in such circumstances is an invitation to employers to have vague or non-existent performance standards and to make false assertions of employee incompetence.

Even if plaintiff's affidavits were inadequate in this case, it is significant that defendant's first affidavit was contrary to its own business record, the list of sucessful attempts at drawing arterial blood attached to plaintiff's first affidavit. After that business record was established on the courts record, the employer sought to show that the face of the record was not actually the truth, which by then was a weak argument at best. Other courts have found that similar unexplained revision of the facts when made by a Title VII plaintiff to be the basis for summary judgment against that plaintiff. (Wilson v. Westinghouse Electric company, 838 F2d 286 at 289)

3. Summary judgment was improper when plaintiff's motion to compel discovery was denied. Plaintiff sought co-workers records

to compare their performance to hers. Plaintiff also sought a specific step-wise procedure for drawing arterial blood, in order to show that she sucessfully completed all the steps in at least four cases. Thus, plaintiff was denied evidence that other employees were not treated as harshly as plaintiff and evidence that the employers proferred reason for discharge lacked credibility. Plaintiff's motion to compel discovery was denied by a marginal entry order, again without any reason given by the court.

4.Summary judgment in this case was contrary to plaintiff's right to due process of law. This court in Logan v. Zimmerman Brush Co., (455 US 422) found Title VII rights to be constitutionally protected property rights. If plaintiff's motion for a default judgment was not granted because of the Sixth Circuit's preference for a "decision on the merits," it seems preju-

dicial and inequitable that district court made no discussion of the merits in its summary judgment. The decisions rendered in this case have failed to provide plaintiff due process of law.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that a writ of cerriorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

MARIE E. CULLY
1384 West 83rd Street #7
Cleveland, Ohio 44102
(216) 651-8637

Petitioner and Attorney Pro Se

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

NO. ____

MARIE CULLY,

PETITIONER,

v.

GRACE HOSPITAL,

RESPONDENT

PROOF OF SERVICE

STATE OF OHIO)
) s.s.:
COUNTY OF CUYAHOGA)

MARIE CULLY, after being duly sworn, deposes and says that pursuant to Rule 28.4 (a) of this Court she served the within PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SIXTH CIRCUIT on counsel for the Respondent by enclosing three copies thereof in

an envelope, first class postage prepaid,

addressed to:

Albert J. Rhoa
RHOA FOLLEN & RAWLIN CO., L.P.A.
1850 Midland Building
Landmark Office Towers
101 Prospect Avenue, West
Cleveland, Ohio 44115-1027

and depositing the same in the United States

Mails at Cleveland, Ohio on December 15, 1988.

Marie Cully

Marie Cully, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME this 15 day of December, 1988.

Kenneth Close Esq

Notary Public

My Commission has no appropriate date
ORC 147.03

APPENDIX

[FILED 1987 NOV 13 AM 11:04

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. C86-5267

JUDGE ALICE M. BATCHELDER

MARIE CULLY

Plaintiff

v.

GRACE HOSPITAL

Defendant

O R D E R

Upon review of Defendants' motion for summary judgment, plaintiff's opposition and both parties' reply brief, the Court finds that there is no genuin e issue of material fact and that Defendant is entitled to judgment as a matter of law. Therefore, Defendant's motion for summary judgment is hereby GRANTED.

IT IS SO ORDERED.

Dated this 13th day of Nov, 1987.

[Alice M. Batchelder]

ALICE M. BATCHELDER
UNITED STATES DISTRICT JUDGE

[FILED 1987 DEC 21 PM 1:29]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. c 86-5267

JUDGE ALICE M. BATCHELDER

MARIE CULLY

Plaintiff

v.

GRACE HOSPITAL

Defendant

O R D E R

Pursuant to Plaintiff's Motion to Reconsider and Defendant's Brief in Opposition, this Court finds that summary judgment was properly granted in the first instance and hereby DENIES Plaintiff's Motion to Reconsider.

IT IS SO ORDERED.

Dated this 21st day of December, 1987.

[Alice M Batchelder

ALICE M. BATCHELDER
UNITED STATES DISTRICT JUDGE

[FILED JUN 20 1988 JOHN P. HEHMAN, Clerk]

No. 88-3060

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARIE CULLY,

Plaintiff-Appellant

v.

GRACE HOSPITAL,

Defendant-Appellee.

O R D E R

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed is this decision is reproduced.

BEFORE: MILBURN, GUY and NORRIS, circuit Judges.

Plaintiff appeals the district court's judgment granting summary judgment in favor of the defendant Grace Hospital. This case has been referred to a panel of the court

pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the record and the briefs, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Upon review, we conclude that the district court's judgment was correct.

Accordingly, the district court's judgment is hereby affirmed. Rule 9(b)(5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

[Leonard Green]

Clerk

[FILED SEP 23 1988 LEONARD GREEN, Clerk]

NO. 88-3060

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARIE CULLY

Plaintiff-Appellant,

v.

GRACE HOSPITAL

Defendant-Appellee

O R D E R

BEFORE: MILBURN, GUY and NORRIS, circuit Judges

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the orginal judges of this Court, and less than a majority of the judges having favored the suggestion, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that

the issues raised in the petition were fully considered upon the orginal submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

[Leonard Green]

Leonard Green, Clerk

Supreme Court, U.S.
FILED
JAN 17 1989
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CLERK

No. 88-1015

In The Supreme Court of The United States
October Term, 1988

MARIE CULLY,

Petitioner,

v.

GRACE HOSPITAL,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

Brief of Respondent Grace Hospital

IN OPPOSITION

ALBERT J. RHOA
RONALD V. RAWLIN
Counsel of Record

RHOA, FOLLEN & RAWLIN
CO., L.P.A.
1850 Midland Building
101 Prospect Ave., West
Cleveland, Ohio 44115
(216) 861-6886

Attorneys for Respondent,
Grace Hospital

No. 88-1015

In The Supreme Court of The United States
October Term, 1988

MARIE CULLY,

Petitioner,

v.

GRACE HOSPITAL,

Respondent.

On Petition for Writ of Certiorari
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ALBERT J. RHOA
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Counsel of Record

RHOA, FOLLEN & RAWLIN
CO., L.P.A.
1850 Midland Building
101 Prospect Ave., West
Cleveland, Ohio 44115
(216) 861-6886

Attorneys for Respondent,
Grace Hospital

QUESTIONS PRESENTED FOR REVIEW

1. Whether a federal district court has the power to limit the discovery practice of litigants?

2. Whether a federal district court must make findings of fact and conclusions of law when it grants summary judgment?

3. Whether a federal district court denies a party due process of law when it grants summary judgment?

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STATEMENT OF THE CASE

Respondent, Grace Hospital, respectfully requests that this Honorable Court deny Marie Cully's Petition for Writ of Certiorari.

Petitioner has failed to demonstrate any conflict among decisions by the federal courts of appeals. Further, Petitioner has failed to identify any important federal question worthy of this Court's consideration.

Therefore, this Honorable Court should deny the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

I. Procedural History

On December 23, 1986, Petitioner filed a Complaint against Respondent alleging that it conspired to deprive her of her civil rights. In her Complaint, which was filed with the United States

District Court for the Northern District of Ohio, Petitioner alleged that Grace Hospital fired her in retaliation for having filed a discrimination claim against another hospital, Lutheran Medical Center. Petitioner claimed that Grace Hospital hired and later fired her for the sole reason of impoverishing her and rendering her financially unable to pursue her discrimination claim.

Petitioner's conspiracy claim was never supported by any credible evidence. Rather, all of the evidence presented at the district court level demonstrated a non-discriminatory justification of Grace Hospital's employment decision to dismiss Petitioner.

During the pendency of her claim, Petitioner requested that Grace Hospital produce the personnel files of all employees terminated by Respondent. Grace Hospital objected to this discovery

request on the grounds of relevancy and oppression. In the spirit of cooperation, however, Respondent identified the names of its dismissed employees, the employees' positions and the reasons for their dismissals. Information beyond that which was provided by Grace Hospital would have been irrelevant and invasive. Subsequently, Petitioner filed a motion to compel discovery which was denied by the district court.

On August 10, 1987, Respondent moved the district court for an order granting summary judgment in its favor and against Petitioner. The evidence of the case showed conclusively that Grace Hospital terminated Marie Cully's employment for the reason that Petitioner failed to demonstrate the ability to perform safely the duties of a respiratory therapist, the position for which she was hired.

From all of the evidence, reasonable minds could have come to but one conclusion, a conclusion in favor of Respondent and adverse to Petitioner. Also, there were no issues remaining for trial, and Grace Hospital was entitled to judgment as a matter of law. Accordingly, the district court entered an order granting final judgment in favor of Respondent.

II. Relevant Facts

In her Complaint, Petitioner alleged that Respondent conspired to deprive her of her civil rights. Petitioner claimed that Grace Hospital terminated her employment as a respiratory therapist for the sole reason of improverishing her and rendering her unable to pursue a discrimination claim which she filed against a previous employer. Respondent rebutted completely this charge of conspiracy with

evidence of a non-discriminatory justification of its employment decision.

During her pre-employment interview with Grace Hospital, Petitioner represented herself as a qualified respiratory technician, able to perform the necessary duties of the job, including the ability to draw and sample arterial blood gases. As a new employee of the Respiratory Therapy Department, Petitioner was required to complete an in-service training program. This training program is given to insure that the therapist is qualified to draw safely arterial blood gases from the hospital's patients. To pass this program, the new employee must successfully complete ten blood gas drawings. Petitioner attempted sixteen such drawings, and was unable to complete successfully any of these procedures without direction or assistance.

Hospital procedure requires an employee who fails to meet the above-mentioned requirements to complete a training course which includes practicing on an artificial arm. After the hospital supervisors suggested to Petitioner that she complete this training program, Ms. Cully became hostile and insisted that she be allowed to practice drawing samples from the hospital's patients. For obvious reasons, Petitioner could not have been allowed to "practice" her skills on patients.

Since Petitioner failed to demonstrate the ability to perform the duties of a respiratory therapist, and since Petitioner refused to take the hospital's training course, Grace Hospital had no choice but to terminate Ms. Cully's employment. Significantly, Petitioner herself acknowledged that the inability to

draw arterial blood gases is grounds for dismissal of a respiratory therapist.

The district court found, and the court of appeals affirmed, that Petitioner failed to prove that she had been fired by Grace Hospital in retaliation for having filed a discrimination claim against another hospital.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari fails to demonstrate that this case is worthy of review.

This Court and the various circuits are in agreement concerning the power of a district court to monitor and regulate the discovery practice of litigants. The circuits agree that the district court is vested with a discretionary power to limit discovery which is burdensome, oppressive or intrusive.

Additionally, there is a consensus among the federal circuits that a district court need not make findings of fact and conclusions of law when it grants summary judgment.

Finally, the issues raised by Petitioner do not present an important federal question. It is well settled that a litigant is not denied due process of law when summary judgment is entered against her.

For these reasons, this Court should deny Petitioner's request for a writ of certiorari.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

The Petition for Writ of Certiorari Fails to Demonstrate That This Case Is Worthy of Review

Supreme Court Rule 17.1 sets forth the criteria for granting a writ of certiorari. The rule provides:

A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

* * *

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Sup. Ct. R. 17.1.

Nowhere in her Petition does Marie Cully claim that the United States Court of Appeals for the Sixth Circuit rendered a decision in conflict with the decision of another federal court of appeals on the same matter. Sup. Ct. R. 17.1(a).

Petitioner does not claim that the Sixth Circuit decided an important question of federal law in a way which conflicts with applicable decisions of this Court. Sup. Ct. R. 17.1(c).

Rather, Petitioner merely avails herself of this Court in an attempt to relitigate her unfounded conspiracy claim against Respondent, Grace Hospital. Because Petitioner has failed to demonstrate special and important reasons for granting certiorari, this Court should deny her petition.

I. The Petitioner Has Failed to Demonstrate Conflicting Decisions by the Federal Courts of Appeals

A. A Federal District Court Has the Power to Limit the Discovery Practice of Litigants

Under the Federal Rules of Civil Procedure, district courts are vested with the power to monitor and regulate the discovery practice of litigants. District courts are under an affirmative duty to exercise this power when the discovery requests of a party are burdensome, oppressive or intrusive. Rule 26(b) of the Federal Rules of Civil Procedure sets out in part:

> The frequency or extent of use of the discovery methods . . . shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery

> is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion [for a protective order].

Not only do district courts have the discretionary power to monitor and limit the discovery practice of litigants, but they are encouraged to intervene when discovery requests are irrelevant or embarrassing. See Advisory Committee Notes accompanying Civil Rules 26 and 37; see also 2 J. Moore, A. Vestal & P. Kurkland, Federal Practice and Procedure Section 15.02[1] (1984).

Petitioner argues tht the district court erred in refusing to order Respondent to produce the personnel files of all terminated employees. This discovery request was clearly oppressive in that the production of these records would have

certainly invaded the privacy of the other dismissed employees. Further, Grace Hospital responded to Petitioner's discovery requests by identifying the names of its dismissed employees, the employees' positions and the reasons for their dismissals. Clearly, the district court did not abuse its discretion in refusing to order Respondent to produce the personnel files.

In affirming the district court's denial of Petitioner's motion to compel discovery, the Sixth Circuit has not sanctioned any departure from the accepted and usual course of judicial proceedings. Therefore, this Court should deny Petitioner's request for certiorari.

B. A Federal District Court Is Not Required to Make Findings of Fact and Conclusions of Law When It Grants Summary Judgment

Petitioner requests review on the issue of whether a district court must

make findings of fact and conclusions of law when it grants summary judgment. This issue does not warrant review by this Court since the federal courts are in agreement on this issue.

Rule 52(a) of the Federal Rules of Civil Procedure sets out when a district court is required to find facts and state its conclusions of law. The clear language of this rule is most instructive:

> Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

Fed. R. Civ. P. 52(a).

This Court and all of the federal courts agree that there is no requirement that a district court make findings of fact when granting summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Bohn Aluminum & Brass Corp. v. Storm King Corp., 303 F.2d 425 (6th Cir. 1962); Hindes v. United States, 326 F.2d

150, 152 (5th Cir. 1964), cert. denied, 377 U.S. 908 (1964) ("The only finding necessary [is] that there [is] no genuine issue as to any material fact."); Randolph-Sheppard Vendors of America, Inc., 628 F.2d 1364 (D.C. Cir. 1980). In her opposition to this well settled rule of law, Petitioner cites a case, Goldberg v. Kelly, 397 U.S. 254 (1970), which is inapposite.

Consistent with the Hindes decision, the district court's order granting Respondent's motion for summary judgment stated that "the Court finds that there is no genuine issue of material fact and that Defendant is entitled to judgment as a matter of law."

II. The Petitioner Has Failed to Identify an Important Federal Question Worthy of Review

A. A Federal District Court Does Not Deny a Party Due Process of Law When It Grants Summary Judgment

The district court found, and the court of appeals affirmed, that Respondent, Grace Hospital, did not conspire to deprive Petitioner of her civil rights. Consistent with its duties, the district court granted Grace Hospital's motion for summary judgment upon finding that "there [was] no genuine issue as to any material fact and that the moving party [was] entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

Respondent rebutted completely Petitioner's conspiracy claim with evidence of a non-discriminatory justification of its decision to terminate Ms. Cully's employment. The evidence of the case showed conclusively that Grace Hospital dismissed Petitioner for her

inability to perform safely the duties of a respiratory therapist without immediate supervision and assistance.

The federal courts have held that an employer may lawfully terminate an employee for his inability to demonstrate the qualifications necessary for the position for which he was hired. Such terminations are not the result of discrimination and they do not compromise civil rights. Peters v. Middlebury College, 409 F. Supp. 857 (D.C. Vt. 1976); Donaldson v. Pillsbury, 406 F. Supp. 1210 (D.C. Minn. 1976); Schaulis v. CTB/McGraw Hill, Inc., 496 F. Supp. 666 (N.D. Ca. 1980) ("An employer may fully refute a retaliation claim by demonstrating a non-discriminatory justification for its employment decision.").

From all of the evidence of the case, reasonable minds could only have concluded that Grace Hospital had a legitimate reason for terminating Petitioner's

employment, and that this reason did not include retaliation for a discrimination claim brought against another hospital. There was no genuine issue remaining for trial and Respondent was entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

Petitioner now argues tht a district court denies a party due process of law when it grants summary judgment. This argument has been rejected:

> A summary judgment reached in accordance with Federal Rule of Civil Procedure 56, however, satisfies the requirement of due process.

Hill v. McDermott, Inc., 827 F.2d 1040, 1042 (5th Cir. 1987), citing Celotex Corp., 477 U.S. 317.

Petitioner has failed to demonstrate that either the United States District Court for the Northern District of Ohio or the United States Court of Appeals for the Sixth Circuit has departed from the

accepted and usual course of judicial proceedings. Futher, Petitioner has failed to present an important question of federal law which has not been, but should be, settled by this Court. Therefore, Petitioner's request for certiorari fails under Supreme Court Rule 17.1.

CONCLUSION

For all of the foregoing reasons, this Court should deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

RHOA, FOLLEN & RAWLIN CO., L.P.A.

ALBERT J. RHOA
RONALD V. RAWLIN
1850 Midland Building
101 Prospect Ave., West
Cleveland, Ohio 44115
(216) 861-6886

Attorneys for Respondent,
Grace Hospital

STATEMENT REQUIRED BY RULE 28.1

Respondent, Grace Hospital, has no parents, subsidiaries or affiliates.